

All communications respecting this case should identify it by number and names of parties.

MAILED



AUG 23 1993

PAT. & T.M. OFFICE
BOARD OF PATENT APPEAL
AND INTERFERENCE

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Address: **BOX INTERFERENCE**
Commissioner of Patents and Trademarks
Washington, D.C. 20231

Telephone: (703)557-4007
Facsimile: (703)557-8642

In re application of: Tucholski :
Serial No.: 07/641,394 :
Filed: January 15, 1991 :
For: BATTERIES WITH TESTER LABEL :
: PETITION FOR ACCESS
:

Stephen D. Murphy has filed a petition requesting that he be granted access to the above-identified application. A copy of the petition is forwarded herewith to applicant. Applicant is hereby given THREE WEEKS from the date of this letter to state any objection to the granting of the requested access. Failure to file a timely objection will be construed as applicant's consent to the request. The three-week period for response is not extendable under the provisions of 37 CFR 1.136(a).

Applicant's attention is directed to Section 103 of the Manual of Patent Examining Procedure which states, in part, that:

Whenever a patent relies upon the filing date of an earlier but still pending application, the public is entitled to see the portion of the earlier application that relates to the common subject matter, and also what prosecution, if any, was had in the earlier application of subject matter claimed in the patent.

Since the enclosed petition relies on the fact that U.S. Patent No. 5,223,003 claims the benefit of the above-identified application, it appears that petitioner would at least be entitled to access to the subject matter common to the patent and the application.

Accordingly, if applicant files an objection to the requested access, he must include therewith (1) a copy of the portion of the '394 application as filed which relates to the subject matter therein common to the '003 patent, and (2) a copy of the prosecution, in the '394 application, of the subject matter claimed in the '003 patent. Failure to file such copies with the objection may result in the objection being deemed incomplete, and given no consideration. A copy of any such objection must be served on petitioner. 37 CFR 1.248.

All communications concerning this matter should be directed to the attention of the undersigned, in an envelope marked "Box Interference."



Ian A. Calvert, Vice Chairman
Board of Patent Appeals and Interferences

Acting pursuant to authority delegated by the Commissioner of Patents and Trademarks.

Copies to:

Robert W. Welsh
Eveready Battery Company, Inc. (for Tucholski)
Checkerboard Square
St. Louis, MO 63164
(w/encl)

Stephen D. Murphy
Scully, Scott, Murphy & Presser (Petitioner)
400 Garden City Plaza
Garden City, NY 11530

IAC/dls